BellSouth did not adhere to its resale obligations in any respect. *LPSC Staff Final Recommendation* at 111. BellSouth similarly complies with this checklist requirement in Georgia. That is demonstrated both by the record evidence and by the fact that CLECs currently serve their customers over 100,000 resold lines in Georgia. *See Wakeling Aff.* ¶ 16 (table).

1. Retail Telecommunications Services in General

In both Georgia and Louisiana, BellSouth has binding legal obligations to offer its retail services for resale. *See Ruscilli/Cox Joint Aff.* ¶ 82. In both states, BellSouth's obligations conform to the 1996 Act and this Commission's requirements including its requirements as to resale of contract services arrangements. *See id.* ¶¶ 80-86. BellSouth offers its services for resale in both states at the state-commission-approved discounts. *See id.* ¶ 81.

As reflected by BellSouth's performance data, BellSouth provides services for resale to CLECs in both Georgia and Louisiana in substantially the same time and manner as for its retail customers.

Georgia. BellSouth's resale performance in Georgia is very good. BellSouth met 89% of its performance metrics for which there was CLEC activity (a total of 142 metrics) in at least two of the three months from May through July. *Varner Ga. Aff.* ¶ 274.

When CLECs order BellSouth's service in Georgia, they should have a high level of confidence that LSRs submitted to BellSouth will receive a timely FOC or reject notice. BellSouth has demonstrated strong performance as to FOCs, returning 98% within the specified time frame. *Id.* ¶¶ 281-284 (A.1.9, A.1.11, A.1.13). BellSouth also far exceeded the benchmarks for rejects of partially mechanized orders, providing 96% of rejects for partially mechanized orders in 18 hours (as compared to an 85% benchmark), and 98% of rejects for manual orders in 24 hours (again as compared to an 85% standard). *Id.* ¶¶ 278-279 (A.1.6, A.1.8). During the same three-month period, BellSouth returned 92% of rejects for electronic orders within one hour. *See Varner Ga. Aff.* ¶ 277 (A.1.4). While that figure is somewhat below the 97% benchmark, a BellSouth investigation has discovered that, in Georgia, 41% of all LSRs that did not meet such benchmarks were issued between 11:00 p.m. and 4:30 a.m., when BellSouth's legacy systems are out of service; that fact significantly affected this calculation, as did a change in the time-stamp identification that led to the counting of the reject of multiple versions of the same LSR. *Id.* ¶¶ 277-278.

With respect to provisioning, BellSouth provides CLECs with jeopardy notifications, order completions, and other order status information on resale orders. *See Stacy Aff.* ¶¶ 365-381; *New York Order* ¶ 185 (BOC must allow CLECs access to order status and jeopardy information). BellSouth, moreover, met or exceeded the order completion interval for the retail analog for 43 of 50 of these sub-metrics for May, June, and July. *See Varner Ga. Aff.* ¶ 286 (A.2.1). In July, BellSouth met 14 of 16 of the retail analogs, and one of the two misses involved only five CLEC orders. *See* BellSouth Monthly State Summary – Georgia, July 2001 (A.2.1) (*Varner Affs.* Exh. PM-4).

Furthermore, BellSouth not only delivers service in a timely manner, it generally does so with no more technical problems than exist with service BellSouth delivers to its retail units. In May through July 2001, BellSouth met or exceeded the retail analog for 43 of the 52 sub-metrics with CLEC activity for provisioning troubles within 30 days; BellSouth, moreover, met or exceeded the retail analog for 16 out of 18 sub-metrics in July (with one of the two misses being an item that had only one CLEC order). *Id.* ¶ 291. When repairs are necessary, CLECs again receive nondiscriminatory treatment. BellSouth met or surpassed the retail analog for 31 of the 35 missed repair appointment sub-metrics with CLEC activity for May through July, and met 10 of 11 for July. *Id.* ¶ 295. Other metrics confirm this strong performance. *See id.* ¶¶ 296-299.

Louisiana. BellSouth's resale performance in Louisiana is similarly strong. BellSouth met 86% of its performance metrics for which there was CLEC activity (a total of 125 metrics) in at least two months from May through July. *Varner La. Aff.* ¶ 280.

Again, BellSouth provided timely FOC or reject notices in the overwhelming majority of cases. As in Georgia, BellSouth has demonstrated excellent performance as to FOCs, returning 98% within the specified time frame, and meeting the benchmarks for electronic, partially mechanized, and manual orders. *Id.* ¶¶ 287-290 (A.1.9, A.1.11, A.1.13). BellSouth also far exceeded the 85% benchmarks for rejects of manual and partially mechanized and manual orders, providing 98% of rejects for partially mechanized orders in 18 hours and 96% of rejects for manual orders in 24 hours. *Id.* ¶¶ 285-286 (A.1.6, A.1.8). During the same three-month period, BellSouth returned 94% of electronic rejects within one hour. *See id.* ¶ 282 (A.1.4). As discussed above with regard to Georgia, while that figure is slightly below the 97% benchmark, the metric understates BellSouth's performance. *Id.* ¶¶ 283-284.

With respect to provisioning, BellSouth again provides CLECs with jeopardy notifications, order completions, and other order status information on resale orders. *See Stacy Aff.* ¶¶ 365-381. BellSouth, moreover, met or exceeded the order completion interval for the retail analog for 40 of the 45 sub-metrics for May, June, and July. *See Varner La. Aff.* ¶ 292. Four of those misses were in May, and in July BellSouth met *every* sub-metric for which there was CLEC volume. *See* BellSouth Monthly State Summary – Louisiana, July 2001 (A.2.1) (*Varner Affs.* Exh. PM-16).

CLECs in Louisiana can also expect to obtain resold lines with no greater amount of technical problems than BellSouth itself experiences. In May through July 2001, BellSouth met or exceeded the retail analog for 43 of the 50 sub-metrics with CLEC activity for provisioning troubles within 30 days. BellSouth, moreover, met or exceeded the retail analog for 14 out of 16 sub-metrics in July. *Id.* ¶ 296 (A.2.12). CLECs also receive repair service at parity. BellSouth met or surpassed the retail analog for 27 of the 33 missed repair appointment sub-metrics with CLEC activity for May through July, and met 9 of 12 for July, with two of the misses being a sub-category for which there were only three missed appointments, and another for which there was only one missed appointment. *Id.* ¶ 300 (A.3.1). The other sub-metrics again confirm the fact that BellSouth's performance is nondiscriminatory. *See id.* ¶¶ 301-304.

2. DSL Services

BellSouth's policies regarding resale of advanced services also conform to governing law. Advanced services, such as xDSL transmission, are "telecommunications services" under the 1996 Act to the extent that they do "no more than transport information of the user's choosing between or among user-specified points, without change in the form or content of the information as sent and received."[91]

BellSouth does not offer any DSL transport services that qualify as *retail* telecommunications services in Georgia or Louisiana today. Rather, to the extent that BellSouth offers customers a transport-only DSL service, it does so only on a wholesale basis. And to the extent that retail customers receive DSL transport service from BellSouth, DSL is merely a wholesale input into an information services offering that is not subject to the section 251(c)(4) resale obligation. We will discuss those two situations in turn.

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[91] Memorandum Opinion and Order, and Notice of Proposed Rulemaking, *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 13 FCC Rcd 24011, 24030, ¶ 35 (1998) ("*First Advanced Services Order*") (citing 47 U.S.C. § 153(46)).

BellSouth's Wholesale DSL Service. In the *Second Advanced Services Order*,[92] this Commission concluded that advanced services sold to ISPs as an input component for the ISPs' high-speed Internet access product are not sold at retail. *See Second Advanced Services Order* ¶ 19. "DSL services sold to [ISPs] are not targeted to end-user subscribers, but instead are targeted to [ISPs] that will combine a regulated telecommunications service with an enhancement, Internet service, and offer the resulting service, an unregulated information service, to the ultimate end-user." *Id.* ¶ 17. On review, the D.C. Circuit affirmed the Commission's conclusion.[93] The Commission has incorporated this understanding in its rules, which provide that "advanced telecommunications services sold to [ISPs] as an input component to the [ISPs'] retail Internet service offering shall not be considered to be telecommunications services offered on a retail basis that incumbent LECs must make available for resale at wholesale rates." 47 C.F.R. § 51.605(c).

The *Second Advanced Services Order* also discusses a series of indications that DSL transport services offered to ISPs are not retail services offered to the ultimate end user. Specifically, this Commission reviewed a Verizon tariff that "illustrate[d] this point": "the purchasing [ISP] must provision all CPE and wiring to its end-users, provide customer service directly to the end-users, and assume sole responsibility for marketing, ordering, installation, maintenance, repair, billing and collections vis-à-vis the end-user subscriber." *Second Advanced Services Order* ¶ 15. A few paragraphs later in the order, the Commission recognized that the resale obligation of section 251(c)(4) applies only to "services targeted to end-user subscribers, because only those services would involve an appreciable level of avoided costs that could be

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[92] Second Report and Order, *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 14 FCC Rcd 19237 (1999).

used to generate a wholesale rate." *Id.* ¶ 17. Where the DSL telecommunications services are designed for and sold to ISPs as an input component to the ISPs' retail high-speed Internet service, the ISP "will take on the consumer-oriented tasks of marketing, billing, and collections to the ultimate consumer and accepting repair requests directly from the end-user. Incumbents would not avoid any appreciable level of retail costs associated with providing these typical retail functions for the ultimate end-user when offering these bulk services to the ISPs." *Id.*

BellSouth's DSL transport offering meets the criteria set out in the *Second Advanced Services Order*. BellSouth offers a range of DSL products in its FCC Special Access Tariff. BellSouth provides a "residential class" (also sometimes referred to as "industrial class" or "low speed") DSL service, which is a "best efforts" service that has no guaranteed minimum speed. *See Fogle Aff.* ¶ 3 (App. A, Tab G). Residential-class service represents more than 99% of all BellSouth's DSL virtual circuit sales, and customers seeking to purchase it must buy at least 51 circuits over a period of six months. *See id.* ¶ 4. BellSouth also offers a variety of higher speed "business class" services, which comprise less than 1% of BellSouth's virtual circuit sales. *See id.* ¶ 3. BellSouth's tariff makes clear that all these services are designed to be a component of a network service provider's ("NSP") enhanced services offering to its consumers: "BellSouth ADSL service is intended as an industrial offering that is made available to Network Service Providers for provision of high-speed data services *to their customers* . . . ." BellSouth Tariff FCC No. 1, § 7.2.17(A) (emphasis added); *Fogle Aff.* ¶ 6.

In the case of both residential-class and business-class service, it is BellSouth's wholesale customer (the NSP), not BellSouth, that assumes the consumer-oriented tasks associated with a retail service. *See Fogel Aff.* ¶ 7. The NSP, not BellSouth, accepts orders for its DSL Internet

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[93] *Association of Communications Enters. v. FCC*, 253 F.3d 29, 33 (D.C. Cir. 2000).

access services. *See id.* End-user customers order service directly from the NSP, and those customers pay the price that has been established by that NSP for the desired product. *See id.* The NSPs must provide their own customer premises equipment. *See id.*

All marketing, inside wiring, CPE, billing, and maintenance and repair are the responsibility of the NSP; if the NSP's customer calls BellSouth regarding billing, maintenance, disconnects, or new orders, the NSP's customer is directed to call the NSP. *See id.* Moreover, as noted above, BellSouth's residential-class offering is made available only if an NSP agrees to purchase 51 lines within six months, thus indicating that, like the Verizon tariffed service offering at issue in the *Second Advanced Services Order*, it is a "bulk DSL telecommunications service." *See Second Advanced Services Order* ¶ 14. The business-class offering – of which only 47 circuits have been sold in Georgia and Louisiana *combined* – similarly has key indicia of a wholesale service. *See Fogle Aff.* ¶¶ 11-12. As discussed above, it is the NSP, not BellSouth, that does all the marketing, billing, collections, CPE, and maintenance and repair. Thus, in the business-class context, as in the context of the much more popular residential-class offering, BellSouth service is designed to be a wholesale input into a larger product sold by ISPs and carriers, not an end-user offering. *See id.* ¶ 11. End users are not the "targets" of this product, as BellSouth has made abundantly clear by stating that it will not affirmatively market it to end users and will direct sales representatives to discard any sales material that has even passing references to the possible use of the product for end users. *See id.* ¶ 12.[94]

<u>BellSouth's Retail Information Service</u>. BellSouth also offers a high-speed Internet access service at retail. *See Fogle Aff.* ¶ 8. This Commission has consistently found that

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[94] BellSouth will permit resale of this service without a discount, and will offer it even where a CLEC is providing resold voice service on the line. *See Ruscilli/Cox Joint Aff.* ¶ 88.

"Internet access services are appropriately classed as information, rather than telecommunications, services." Report to Congress, *Federal-State Joint Board on Universal Service*, 13 FCC Rcd 11501, 11536, ¶ 73 (1998) ("*Report to Congress*"). *See also Second Advanced Services Order* ¶ 14 (when an Internet service is added to a DSL telecommunications service, the ISP is able "to offer and sell the *newly created information service* to the ultimate consumer: the residential or business subscriber") (emphasis added). Under the Commission's precedents, the retail service that BellSouth offers is an information service, not a telecommunications service, notwithstanding the fact that the information service is provided by means of DSL telecommunications. In the *Report to Congress*, this Commission expressly addressed the question of how to characterize the relationship between an information service provider and a telecommunications service provider, even when they are one and the same:

> Under *Computer II*, and under our understanding of the 1996 Act, *we do not treat an information service provider as providing a telecommunications service to its subscribers*. The service it provides to its subscribers is not subject to Title II, and is categorized as an information service. The information service provider, indeed, is itself a user of telecommunications; that is, telecommunications is an input in the provision of an information service. Our analysis here rests on the reasoning that under this framework, in every case, some entity must provide telecommunications to the information service provider. *When the information service provider owns the underlying facilities, it appears that it should itself be treated as providing the underlying telecommunications. That conclusion, however, speaks only to the relationship between the facilities owner and the information service provider (in some cases, the same entity); it does not affect the relationship between the information service provider and its subscribers.*

Report to Congress ¶ 69 n.138 (emphases added). Thus, even where the telecommunications provider and the information service provider are the "same entity" – here, BellSouth – the subscriber to the information service is receiving only an information service. BellSouth's retail high-speed DSL Internet access service is, therefore, an information service, not a retail telecommunications service, and it is accordingly not subject to resale at a wholesale discount under section 251(c)(4). *See Connecticut Order* ¶ 42 n.93 (rejecting argument that "Verizon should make its bundled offerings that include deregulated CPE *and internet access* available for resale. The resale obligation clearly extends only to telecommunications services offered at retail.") (emphasis added).

Although the telecommunications component included in BellSouth's information service offering is not a retail offering, it is subject to unbundling under the Commission's *Computer III* requirements. As the Commission made clear in its *First Advanced Services Order*, "[w]e note that BOCs offering information services to end users of their advanced service offerings, such as xDSL, are under a continuing obligation to offer competing ISPs nondiscriminatory access to the telecommunications services utilized by the BOC information services." *First Advanced Services Order* ¶ 37. BellSouth fully complies with that requirement. *See Fogle Aff.* ¶ 8 & n.1. This Commission's precedents make clear, however, that BellSouth has no obligation to offer its information services for resale under section 251(c)(4).

V. BELLSOUTH'S ENTRY INTO THE INTERLATA SERVICES MARKET IN GEORGIA AND LOUISIANA WILL PROMOTE COMPETITION AND FURTHER THE PUBLIC INTEREST

Section 271 requires this Commission to determine whether interLATA entry "is consistent with the public interest, convenience, and necessity." 47 U.S.C. § 271(d)(3)(C). BellSouth's provision of interLATA services originating in Georgia and Louisiana easily satisfies this requirement. As this Commission has previously recognized, "compliance with the competitive checklist is itself a strong indicator that long-distance entry is consistent with the public interest. This approach reflects the Commission's years of experience with the consumer benefits that flow from competition in telecommunications markets." *Kansas/Oklahoma Order* ¶ 266. As the Commission explained in the *Texas Order*, "BOC entry into the long distance market will benefit consumers and competition if the relevant local exchange market is open to competition consistent with the competitive checklist." *Texas Order* ¶ 419.

There is no reason for the Commission to deviate from that well-established understanding here.[95] As has occurred in every other state where section 271 relief has been granted, BellSouth's long-distance entry in Georgia and Louisiana will stimulate both long-distance and local competition. Indeed, as BellSouth noted at the outset, the Telecommunications Research & Action Center, a non-profit, consumer-supported group, has recently estimated that Georgia consumers will save as much as $300 million in the first year after long-distance relief is granted; the consistent evidence of consumer savings where section 271 relief has been granted indicates that consumers in Louisiana will likewise save hundreds of millions of dollars. Both the LPSC and the GPSC, moreover, have adopted meaningful performance assurance plans to ensure that BellSouth continues to meet the requirements of section 271.

A. Consumers Clearly Benefit from Bell Company Entry into the In-Region, InterLATA Market

If this Commission's experience with the 271 process over the last several years teaches anything, it is that section 271 approval vastly accelerates both long-distance and local competition. As Chairman Powell recently commented, "[w]e see a correlation between the

[95] *See also New York Order* ¶ 428 ("BOC entry into the long distance market will benefit consumers and competition if the relevant local exchange market is open to competition consistent with the competitive checklist. As a general matter, [this Commission] believe[s] that additional competition in telecommunications markets will enhance the public interest."); *Michigan Order* ¶ 381 ("BOC entry into the long distance market will further Congress' objectives of promoting competition and deregulation of telecommunication markets.").

process for approving applications and growing robustness in the markets."[96] There is every reason to believe that that correlation will continue in Georgia and Louisiana. Indeed, MCI WorldCom's recent decision to undertake a "full-scale entry" into the Georgia market, demonstrates that the near-term prospect of section 271 relief has already spurred competition.[97]

Extensive prior experience shows that those consumer benefits will multiply in the months after approval is granted. Numerous studies have documented consumer savings as a result of section 271 approval. Consumers in New York alone have saved up to $700 million a year as a result of greater competition.[98]

Such savings will occur in both the long-distance and the local market. With respect to the long-distance market, this Commission has long recognized that the benefits of entry *presumptively* outweigh any risk of harm.[99] Indeed, the recent behavior of the three major IXCs reinforces this Commission's conclusion that concentration in the long-distance market

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[96] *See* Rodney L. Pringle, *Powell Says Innovation Will Drive Telecom Upswing*, Communications Today, June 6, 2001.

[97] *See* Declaration of Sherry Lichtenberg, attached to Initial Comments of MCI WorldCom, Inc., Docket No. 6863-U (Ga. Pub. Serv. Comm'n filed May 31, 2001); *MCI Seeking Local Service Customers in Georgia*, Associated Press, June 21, 2001.

[98] *See* Telecommunications Research & Action Center, *15 Months After 271 Relief: A Study of Telephone Competition in New York* 8-9 (Apr. 25, 2001) ("An average consumer that switched to Verizon for long-distance service will save between $3.67 and $13.94 a month . . . . [P]hone competition has brought up to $700 million of savings to New York consumers.").

[99] *See* Report and Order, *Inquiry into Policies to Be Followed in the Authorization of Common Carrier Facilities to Provide Telecommunications Service Off the Island of Puerto Rico*, 2 FCC Rcd 6600, 6604, ¶ 30 (1987) ("plac[ing] a burden on any entity opposing entry by a new carrier into interstate, interexchange markets to demonstrate by clear and convincing evidence that [additional] competition would not benefit the public"); Report and Third Supplemental Notice of Inquiry and Proposed Rulemaking, *MTS and WATS Market Structure*, 81 F.C.C.2d 177, 201-02, ¶ 103 (1980) (Commission will "refrain from requiring new entrants to demonstrate beneficial effects of competition in the absence of a showing that competition will produce detrimental effects").

"remain[s] high based on the standards used by the Department of Justice."[100] AT&T, MCI WorldCom, and Sprint all recently implemented an additional fee for the convenience of a single bill.[101] Mark Cooper of the Consumer Federation of America rebuked Sprint over this new charge: "It's an outrage . . . . You can't just unilaterally change prices like that. It reflects a complete disrespect for the consumer."[102] Consumers were hit even harder when AT&T recently raised its basic rate by as much as 11%. AT&T's basic rate is now 30 cents per minute for weekday calls and 25 cents per minute for weeknight calls – 28 million of AT&T's 60 million residential customers pay this basic rate.[103] In comparison, BOCs have been offering more attractive rates to consumers; for instance, SBC's equivalent long-distance rate in Texas, Kansas, and Oklahoma is only ten cents per minute.[104]

BellSouth's entry into long-distance markets, like those of the other BOCs, is particularly pro-competitive because it will give consumers an attractive alternative single source (and bill) for local and long-distance services, placing significant pressure on the competition to provide lower prices, enhanced services, and greater quality. Survey after survey has shown customers' confusion and frustration with telephone bills.[105]

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[100] *See* Industry Analysis Div., Common Carrier Bureau, FCC, *Statistics of the Long Distance Telecommunications Industry* 15 (Jan. 2001).

[101] *See* Suzanne King, *Sprint Angers Consumer Watchdogs by Quietly Implementing Charge*, Kansas City Star, Apr. 13, 2001.

[102] *See id.*

[103] *See* Bloomberg News, *AT&T to Raise Some Rates by as Much as 11 Percent*, N.Y. Times, June 2, 2001, at C4.

[104] *See* SBC, *Southwestern Bell Long Distance*, *at* http://www.swbell.com /Products_Services/Residential/ProdInfo_1/1,1973,187--6-3-15,00.html.

[105] *See SBC Communications to Launch Long Distance Service in Texas*, Bus. Wire, July 7, 2000 ("Seventy-eight percent of those surveyed incorrectly believe the average amount paid per minute for a long-distance call is between 5 and 14 cents. According to a recent survey by

With simpler long-distance rates and the convenience of one all-inclusive telephone bill, the 271-approved BOCs have attracted an unexpectedly high number of customers. After only ten days of service in Texas, SBC signed up 150,000 long-distance customers.[106] SBC had 1.7 million long-distance lines in Texas after six months, and 2.1 million lines after only nine months.[107] Twelve months after entry in Texas and four months after entry in Oklahoma and Kansas, SBC had 2.8 million long-distance lines in service.[108] Verizon, which emphasizes simple, low-rate long-distance plans, signed up approximately 1.9 million long-distance lines during its first 15 months of service in New York and 253,000 during its first two months of service in Massachusetts.[109]

On March 5, 2001, two days before Southwestern Bell's scheduled launch of long-distance service in Kansas and Oklahoma, AT&T announced a special deal exclusively for its long-distance customers in Kansas and Oklahoma. AT&T customers in these two states

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Gartner Group, the average consumer is paying 22 cents a minute for long distance.").

[106] *See* Bruce Meyerson, *SBC and Sprint Top Wall Street Forecasts for April-June Quarter*, Associated Press, July 20, 2000; Bruce Hight, *SW Bell Will Start Selling Long-Distance on Monday; AT&T, WorldCom Already Have Begun Counterattacks*, Austin American-Statesman, July 7, 2000, at A1 (quoting Sam Simon, Chairman, Telecommunications Research & Action Center, who noted that "Bell Atlantic's entry into long-distance – and the entry of AT&T and MCI among others, into local – has lowered costs and lowered rates for consumers, generally across the board").

[107] *See* Michael J. Balhoff, *et al.*, Legg Mason – Equity Research, *Section 271 Relief: Bells Race IXCs/Each Other for New Markets/Revenues* Table 4 (June 24, 2001).

[108] *See* SBC, *Investor Briefing* 7 (July 25, 2001), *at* http://www.sbc.com/Investor/Financial/Earning_Info/docs/2Q_IB_FINAL_Color.pdf.

[109] *See* Michael J. Balhoff, *et al.*, Legg Mason – Equity Research, *Section 271 Relief: Bells Race IXCs/Each Other for New Markets/Revenues* Table 4 (June 24, 2001); *see also* Verizon News Release, *Verizon Communications Second Quarter Earnings Highlighted by Strong Long-Distance and Wireless Sales* (July 31, 2001), *at* http://newscenter.verizon.com/proactive/newsroom/release.vtml?id=59168.

automatically received a special AT&T customer service greeting while placing a call and 30 free minutes of long-distance calling. The promotion in Oklahoma and Kansas by AT&T "is part of the first broader application of this innovative technology."[110] AT&T also offered this promotion in Massachusetts within weeks after Verizon received 271 approval there.[111]

The competitive benefits of 271 approval are also evident in local competition. As the Commission's own recent *Local Competition Report* confirms, "[s]tates with long-distance approval show [the] greatest competitive activity" in local telecommunications.[112] Indeed, former Commission Chairman Kennard aptly noted in recent testimony to Congress that "[w]e need only review the state of competition in New York and Texas to know the Act is working."[113] Other experts have agreed, concluding that "Bell Atlantic's entry into long-distance – and the entry of AT&T and MCI among others, into local – has lowered costs and lowered rates for consumers, generally across the board."[114]

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[110] *See* AT&T News Release, *AT&T Long Distance Customers in Kansas Get the Message: Thanks for Your Loyalty* (Mar. 5, 2001), *at* http://www.att.com/press/item/0,1354,3701,00.html; AT&T News Release, *AT&T Long Distance Customers in Oklahoma Get the Message: Thanks for Your Loyalty* (Mar. 5, 2001), *at* http://www.att.com/press/item/0,1354,3702,00.html.

[111] *See* AT&T News Release, *Bay State AT&T Long Distance Customers Get the Message: Thanks for Your Loyalty* (May 14, 2001), *at* http://www.att.com/press/item/0,1354,3816,00.html.

[112] *See* FCC News Release, *Federal Communications Commission Releases Latest Data on Local Telephone Competition* (May 21, 2001).

[113] William E. Kennard, Chairman, FCC, Statement Before the Committee on the Judiciary, United States House of Representatives, on H.R. 1686 – the "Internet Freedom Act" and H.R. 1685 – the "Internet Growth and Development Act" (July 18, 2000), *at* http://www.house.gov/judiciary/kenn0718.htm.

[114] Bruce Hight, *SW Bell Will Start Selling Long-Distance on Monday; AT&T, WorldCom Already Have Begun Counterattacks*, Austin American-Statesman, July 7, 2000, at A1 (quoting Sam Simon, Chairman, Telecommunications Research & Action Center).

Access lines served by CLECs in New York grew more than 130% from the time the FCC granted Verizon's long-distance application in December 1999 to December 2000. In Texas, CLECs gained more than 500,000 end-user lines in the six months after the FCC granted SBC's request for interLATA relief – an increase of more than 60%. CLEC market share in New York and Texas is more than 135% and 45% higher, respectively, than the national average.[115]

In response to SBC's entry into the long-distance market in Texas, incumbent long-distance carriers such as AT&T, MCI WorldCom, and Sprint began to offer discounts on their regular long-distance plans and in-state long-distance rates to customers who signed up for local service. To attract local customers in Texas, AT&T offers super discount rates on calls to Mexico for Texans who sign up for AT&T's residential local service.[116] Called AT&T's Local One Rate–Texas, this plan has 700,000 customers (approximately 12% of SBC's residential lines in Texas).[117] MCI WorldCom's residential local offerings consist of three specially designed local/long-distance bundles marketed under the name "One Company Advantage."[118] MCI

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[115] *FCC Local Competition Report* at 1.

[116] *See* AT&T, *AT&T Texas Local-Mexico Border Plan*, *at* http://www.att.com/border_plan/ (visited July 30, 2001). In response to AT&T's promotional Mexico rates, SBC rolled out an even less expensive package for callers to Mexico – SBC SuperMexico 60 and SuperMexico 180. *See* SWBT Press Release, *Southwestern Bell Long Distance Introduces New Calling Plans to Mexico* (Mar. 12, 2001), *at* http://www.swbell.com/About/NewsCenter/ShowRelease/0,1018,20010312-01,00.html?NID=.

[117] *See* PR Newswire, *Michigan's Open Telecommunications Market Drives Growing Competition*, May 15, 2001.

[118] *See* MCI WorldCom, *MCI WorldCom Local Phone Service: Texas*, *at* http://www.mci.com/home_family/products_services/local/tx_splash.shtml (visited July 30, 2001).

WorldCom reaffirmed its aggressive drive to attract local customers: "MCI WorldCom continues to sign up new customers in Texas . . . . 'We're very committed to local phone service.'"[119]

In other attempts to retain long-distance customers, AT&T, MCI WorldCom, and Sprint made Texas the main laboratory for deployment of alternative local loop facilities and advanced services. As former Chairman Kennard commented, "We have witnessed a dynamic market for broadband services develop as a result of the opening of local markets in Texas and New York."[120] Texas was one of the earliest test grounds for AT&T's cable telephone service; on the same day that SWBT began offering long-distance services in Texas, AT&T Broadband offered one free month of local service to new cable telephony customers.[121] All three of the major IXCs are deploying fixed wireless networks to provide broadband access and residential telephone services. In parts of Texas, AT&T uses a fixed wireless system to offer customers a local/long-distance/high-speed Internet access package.[122] The service began in the Dallas/Fort Worth area with 2,800 residential customers in the summer of 2000; in one year AT&T expanded the service

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[119] *See* Tom Fowler, *Telecom Issues Come Calling*, Houston Chron., Jan. 7, 2001, at 1 (quoting MCI WorldCom spokeswoman Leland Prince).

[120] William E. Kennard, Chairman, FCC, Statement Before the Committee on the Judiciary, United States House of Representatives, on H.R. 1686 – the "Internet Freedom Act" and H.R. 1685 – the "Internet Growth and Development Act" (July 18, 2000), *at* http://www.house.gov/judiciary/kenn0718.htm.

[121] AT&T Broadband spokeswoman Sarah Duisik commented on how AT&T has spent nearly $200 million in Dallas to upgrade cable networks to offer two-way transmission. *See* Jim Landers, *Faster, Faster: Americans Clamor for High-Speed Net; FCC to Release Data on Spread of Broadband Services*, Dallas Morning News, Aug. 3, 2000, at 22A.

[122] *See Technology Briefs*, Dallas Morning News, Feb. 28, 2001, at 2D ("AT&T Corp. changed the name Tuesday of its fixed wireless service in North Texas to AT&T Wireless Digital Broadband. The service will cost $29.35 a month for unlimited local and long-distance calls within Texas.").

to a number of new cities, including Houston, and now serves almost 20,000 residential lines.[123] In Dallas, MCI WorldCom offers a new alternative to wireline voice and Internet service with Multichannel Multipoint Distribution Service technology.[124] And Sprint developed a high-speed wireless Internet service, using line-of-sight technology, that is now available to business and residential customers in Houston.[125] In addition to cable and wireless Internet options, AT&T recently announced major improvements to its networks serving several Texas cities, including upgrading its fiber network to OC-192 (ten gigabits per second).[126]

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[123] *See* Sixth Report, *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, FCC 01-192, at A-8 (rel. July 17, 2001).

[124] *See* MCI WorldCom Press Release, *MCI WorldCom Adds Dallas to "Fixed Wireless" Service Trials* (Apr. 5, 2000) ("MCI WorldCom today announced Dallas as the fifth market for testing cutting-edge wireless technology which soon will offer customers a new, competitive alternative for high-speed, broadband service. The Dallas trial is the latest step in MCI WorldCom's overall strategic efforts to offer high-speed, broadband services using radio spectrum designated for an advanced technology known as Multichannel Multipoint Distribution Service (MMDS)."), *at* http://www.worldcom.com/about_the_company/press_releases/ display. phtml?cr/20000405.

[125] *See* Tom Fowler, *Sprint Has Wireless Net Access*, Houston Chron., Oct. 3, 2000; Sprint Press Release, *Sprint to Expand Fixed Wireless Service Area in Houston* (June 26, 2001), *at* http://www3.sprint.com/PR/CDA/PR_CDA_Press_Releases_Detail_PF/1,1586,2909,00.html.

[126] *See* AT&T News Release, *AT&T Offers Austin Business Customers Local Service Choice* (Dec. 5, 2000) ("In a move to enhance the suite of local voice and data services it offers business customers, AT&T has completed a $10 million enhancement of its high-speed local network serving the Austin area."), *at* http://www.att.com/press/item/0,1354,3527,00.html; AT&T News Release, *AT&T Offers San Antonio Business Customers Local Service Choice* (Dec. 5, 2000) ("AT&T has completed an $11 million enhancement of its high-speed local network serving the San Antonio area. The company is aggressively targeting the lucrative $110 billion-plus local services marketplace nationwide with promotional offers."), *at* http://www.att.com/press/item/0,1354,3526,00.html; AT&T News Release, *AT&T Offers Houston Business Customers Local Service Choice* (Nov. 29, 2000) ("AT&T has completed a $100 million enhancement of its high-speed local network serving the Houston area."), *at* http://www.att.com/press/item/0,1354,3501,00.html; AT&T News Release, *AT&T Offers Dallas/Fort Worth Business Customers Local Service Choice* (Oct. 19, 2000) ("AT&T is completing a $28 million enhancement of its high-speed local network serving the Dallas and Fort Worth metroplex."), *at* http://www.att.com/press/item/0,1354,3408,00.html.

In sum, long-distance entry is a catalyst for competition in virtually all communications markets. It will bring vast benefits to consumers in Georgia and Louisiana, as it has in other 271-approved states.

B. Performance Remedy Plan

This Commission has held that comprehensive and meaningful performance reporting and remedy plans "constitute probative evidence that the BOC will continue to meet its section 271 obligations and that its entry would be consistent with the public interest." *E.g.*, *Kansas/Oklahoma Order* ¶ 269. BellSouth's performance reporting and remedy plans provide precisely such evidence. As described at the outset, *see supra* Section III, BellSouth tracks performance according to a comprehensive set of Georgia and Louisiana PSC-approved performance measures. Those measures demonstrate that BellSouth is providing CLECs with nondiscriminatory access to facilities and services required by the 1996 Act and this Commission's rules. And to ensure that compliant performance continues, as a result of the extensive collaborative processes discussed above and other proceedings in which CLECs had extensive opportunities for input, both the Louisiana PSC and the Georgia PSC have adopted and implemented a self-executing enforcement mechanism, or "SEEM," that eliminates any possible incentive that BellSouth might have to "backslide" in the wake of 271 approval. *See generally Varner Affs.*, Exhs. PM-8, PM-19.

In approving these plans, those state commissions diligently adhered to the guidelines that this Commission established in the *New York Order* for a meaningful performance plan that provided significant assurance against backsliding. *See Varner Ga. Aff.* ¶¶ 303-304; *Varner La. Aff.* ¶ 308. In both states, the SEEM plan's first tier consists of payments, payable directly to individual CLECs, that are triggered if and when BellSouth fails any of a set of carrier-specific performance measurements. *Varner Ga. Aff.* ¶ 305; *Varner La. Aff.* ¶ 309. The payments in this tier are designed to compensate CLECs when sub-standard performance would be likely to impact their ability to compete. Accordingly, certain Tier 1 payments escalate depending on the magnitude of the failure and the length of time during which the failure persists. *See Varner Ga. Aff.* ¶ 305; *Varner La. Aff.* ¶ 309. A second tier of payments, payable to the state, is triggered by sub-standard performance in service to CLECs in the aggregate. *See Varner Ga. Aff.* ¶¶ 306-307; *Varner La. Aff.* ¶¶ 310-311. A third tier of penalties arises if BellSouth persistently fails to meet a number of key benchmarks over a three-month period. In Georgia, such noncompliance would require BellSouth to suspend the marketing of interLATA service originating in Georgia until it meets the relevant benchmarks for three months in a row. *Varner Ga. Aff.* ¶ 308. In Louisiana, such noncompliance would lead the LPSC to convene an expedited hearing to determine if it should recommend that result to this Commission. *Varner La. Aff.* ¶ 312. BellSouth is aware of no other BOC that has agreed to such a remedy in any state. The specifics of these plans are discussed in greater detail in the Georgia and Louisiana affidavits of Alphonso Varner (at paragraphs 301-355 and 305-358, respectively). *See also* Affidavit of Dr. Edward J. Mulrow (discussing the statistical methodology used in that plan) (App. A, Tab P).

BellSouth's enforcement plan in Georgia exposes it to a total of $336 million in self-executing payments during the first year of its operation. *Varner Ga. Aff.* ¶ 304. This exposure is 44% of BellSouth's net revenue in Georgia in 1999 and thus *exceeds* – as a percentage of net revenue – the exposure that the Commission found adequate in New York and Texas. *See New York Order* ¶ 436 & n.1332; *Texas Order* ¶ 424 & n.1235. In Louisiana, the SEEM plan contains *no* limit on liability, although BellSouth is entitled to an expedited hearing prior to paying assessments beyond a "procedural" cap set at $59 million, or 20% of 1998 net revenues. *Varner La. Aff.* ¶ 351. These measures are thus more than "sufficient to ensure compliance with the established performance standards," *Second Louisiana Order* ¶ 364, and "to prevent backsliding" in the wake of section 271 relief, *Texas Order* ¶ 423.

Indeed, the effectiveness of the performance plan is demonstrated by the fact that, in Georgia, it has already resulted in BellSouth paying millions of dollars in fines for relatively minor performance issues. As explained in the Georgia affidavit of Alphonso Varner (at Exh. PM-9, pages 9-10), of those payments involve such things as failure to meet metrics (such as LNP disconnect timeliness) that are flawed and discrete systems issues (such as OSS Average Response Interval) for which BellSouth has already implemented a fix.

In sum, the SEEM plans create "a meaningful and significant incentive to comply with the . . . performance standards" put in place by the Georgia and Louisiana PSCs, *New York Order* ¶ 433, and accordingly further support the conclusion that BellSouth's entry into the long-distance markets in these states will further the public interest.

VI. BELLSOUTH'S COMPLIANCE WITH SECTION 272

BellSouth complies with the requirements of section 272 and will continue to do so when it receives interLATA authorization in Louisiana and Georgia. *See generally Cochran Aff.* (App. A, Tab E); *Bhalla Aff.*; *Jones Aff.* (App. A, Tab K); *Ruscilli/Cox Joint Aff.* ¶¶ 98-138. BellSouth has already established structural separation and nondiscrimination safeguards that will ensure that its long-distance affiliate does not have any unfair advantage over competitors when it sells in-region, interLATA services.

In the *Second Louisiana Order*, the Commission held that BellSouth had not sufficiently demonstrated compliance with section 272's requirements because it did not demonstrate that it was providing nondiscriminatory OSS access and full disclosure of its transactions. 13 FCC Rcd at 20612. As shown in this Brief's discussions of Checklist Item 2, and as decided by the LPSC, BellSouth is now providing OSS access on a nondiscriminatory basis to other carriers. *See also*

Stacy Aff. Moreover, the discrepancies between BellSouth's ARMIS filings and Internet disclosures found in the *Second Louisiana Order* have been fully explained and reconciled. *See Cochran Aff.* ¶¶ 29-33. The affidavit of Pavan Bhalla demonstrates that BellSouth's Internet disclosures provide complete details of all transactions between BST and BellSouth Long Distance ("BSLD"). *Bhalla Aff.* ¶ 14. Below, we summarize the totality of BellSouth's section 272 showing.

Separate Affiliate Requirement of Section 272(a). BellSouth Corporation has established BSLD as a separate affiliate that will provide in-region, interLATA services in compliance with the structural separation and operational requirements of section 272. *Cochran Aff.* ¶¶ 9-10; *Bhalla Aff.* ¶¶ 5-9. BSLD and BST are separate companies; neither owns any stock in the other. *Cochran Aff.* ¶ 10; *Bhalla Aff.* ¶ 7. As a BOC, BST does not and will not, for as long as section 272 requires, provide interLATA services within BellSouth's region or engage in any manufacturing activities prohibited under section 272(a)(2). *Cochran Aff.* ¶ 9

Structural and Transactional Requirements of Section 272(b). Section 272(b)(1) provides that the required separate affiliate "shall operate independently from the Bell operating company." For as long as BSLD is subject to section 272, it will operate in a manner that satisfies both this statutory requirement and the Commission's implementing regulations. *Cochran Aff.* ¶¶ 11-13; *Bhalla Aff.* ¶ 10.

BSLD and BST do not jointly own telecommunications transmission or switching facilities or the land and buildings on which such facilities are located, and will not jointly own such facilities while subject to section 272's restrictions. *Cochran Aff.* ¶ 12; *Bhalla Aff.* ¶ 10(b). Apart from the approved exception for certain sophisticated equipment that BSLD may purchase from BST, *see Non-Accounting Safeguards Order*[127] ¶ 164, BST employees do not and will not operate, install, or maintain BSLD's facilities, for as long as they are prohibited from doing so by section 272. *Cochran Aff.* ¶ 12. BSLD has not received or inherited any network facilities from BST that are required to be unbundled under section 251(c)(3). *Id.* ¶ 13.

BSLD maintains separate books, records, and accounts from BST. 47 U.S.C. § 272(b)(2); *Cochran Aff.* ¶ 14; *Bhalla Aff.* ¶ 11. BST and BSLD books and records are processed using separate systems. *Cochran Aff.* ¶ 15; *Bhalla Aff.* ¶ 11(c). Pursuant to the Commission's regulations, in maintaining its books, BSLD follows Generally Accepted Accounting Principles ("GAAP"), while BST uses both GAAP and alternative regulatory accounting rules. *Cochran Aff.* ¶ 16; *Bhalla Aff.* ¶ 11(b).

BSLD and BST have separate officers, directors, and employees. 47 U.S.C. § 272(b)(3); *Cochran Aff.* ¶¶ 21-24; *Bhalla Aff.* ¶ 12.

Creditors of BSLD do not and will not have recourse to the assets of BST. 47 U.S.C. § 272(b)(4); *Cochran Aff.* ¶ 26; *Bhalla Aff.* ¶ 13. BSLD's creditors also will not have indirect recourse to such assets through another BellSouth affiliate. *Cochran Aff.* ¶ 26.

BSLD conducts all transactions with BST on an arm's-length basis, and any such transactions are reduced to writing and are available for public inspection. 47 U.S.C. § 272(b)(5); *Cochran Aff.* ¶ 27; *Bhalla Aff.* ¶ 14. Written statements of all these transactions have been certified by a BellSouth officer and are available for public inspection at BellSouth's Atlanta headquarters. *Bhalla Aff.* ¶ 14(d); *Cochran Aff.* ¶ 27. BellSouth also posts on its Internet

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[127] First Report and Order and Further Notice of Proposed Rulemaking, *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, 11 FCC Rcd 21905 (1996), *modified on recon.*, 12 FCC Rcd 2297, *further recon.*, 12 FCC Rcd 8653 (1997).

site the terms and conditions of each transaction between BSLD and BST within ten days of the transaction. *Bhalla Aff.* ¶ 14(d). Completed transactions remain posted on a separate area of the website for 12 months. *Id.* ¶ 14(f). The Internet site also contains a detailed description of posting and updating procedures. *Id.* ¶ 14(d).

The Internet disclosure of the transactions between BSLD and BST includes a detailed and exhaustive description of the rates, terms, and conditions of all active transactions as well as transactions completed within the past 12 months, including the number of times any transaction is repeated, as well as the dates the transactions are completed. *Id.* ¶ 14(c), (e). For service transactions, the disclosure includes any special equipment or facilities employed, the number of assigned workers, and the workers' level of expertise. *Cochran Aff.* ¶ 28. For asset transactions, when there are any asset transfers between BST and BSLD, the disclosure includes the quality and, when relevant, the quantity of each transferred asset. *Id.*

In the *Second Louisiana Order*, this Commission observed that there were apparent discrepancies between BellSouth's ARMIS filings and its Internet disclosures. *Second Louisiana Order* ¶ 335. Those discrepancies, which reflect in part an adjustment that the Commission requires under the *Accounting Safeguards Order*, have been fully explained and reconciled in the Cochran Affidavit accompanying this Application. *See Cochran Aff.* ¶¶ 29-33.

Nondiscrimination Safeguards of Section 272(c). Section 272(c)(1) prohibits BST from discriminating between BSLD and other entities. BST does not and will not, for as long as this requirement applies, discriminate between BSLD and unaffiliated entities in violation of section 272 in the provision or procurement of goods, services, facilities, and information, or in the establishment of standards. *Ruscilli/Cox Joint Aff.* ¶¶ 101-114. These will include UNEs, and non-telecommunications related goods, services, facilities, and information. *Id.* ¶ 104.

BST does not and will not, for so long as the requirement applies, discriminate in favor of BSLD in the establishment of standards related to interconnection or interoperability of public networks. *Id.* ¶ 109.

BST does not and will not, for so long as the requirement applies, discriminate between BSLD and other entities with regard to dissemination of technical information and interconnection standards related to telephone exchange and exchange access services, or with regard to protection of confidential network or customer information. *Id.* ¶ 111. Nor will BST disclose any unaffiliated carrier's customer proprietary network information ("CPNI") to BSLD or any other party, except in accordance with section 222 and applicable Commission rules. *Id.* ¶ 109.

BST will continue to provide public notice regarding any network change that will affect a competing telecommunications carrier's performance or ability to provide service, or will affect BST's interoperability with other telecommunications carriers. *Id.* ¶ 112. Until such public notice is given in accordance with the Commission's regulations, BST will not disclose to BSLD, or any other telecommunications carrier, information about planned network changes that are subject to the Commission's disclosure requirements. *Id.*

BST does not and will not discriminate between BSLD and other unaffiliated carriers in the processing of PIC change orders. *Id.* ¶ 114. BST will use the same specialized automated interface for handling PIC changes for both BSLD and unaffiliated carriers. *Id.*

As required by section 272(c)(2) and as it has done in the past, BST will account for all transactions between BSLD and BST in accordance with applicable Commission rules. *See Cochran Aff.* ¶¶ 35-44; *Ruscilli/Cox Joint Aff.* ¶ 115.

Audit Requirements of Section 272(d). Pursuant to section 272(d)(1), BST will obtain and pay for a biennial federal/state audit, commencing after section 272's requirements become applicable. *See Cochran Aff.* ¶ 45. This audit will be consistent with the Commission's rules. *Id.* In accordance with section 272(d)(2), BST will require the independent auditor to provide this Commission and interested state commissions with access to working papers and supporting materials relating to this audit. *Id.* ¶ 46. As required by section 272(d)(3), BST and its affiliates, including BSLD and BellSouth Corporation, will provide the independent auditor, the Commission, and the state commissions with access to financial records and accounts necessary to verify compliance with section 272 and the regulations promulgated thereunder, including the separate accounting requirements under section 272(b). *Id.* ¶ 47.

Fulfillment of Requests Pursuant to Section 272(e). Pursuant to section 272(e)(1), BST will fulfill any requests from unaffiliated entities for telephone exchange and exchange access services within a period no longer than the period in which it provides such services to BSLD. *Ruscilli/Cox Joint Aff.* ¶¶ 116-123. Pursuant to the Commission's requirements, the requests for which BST will provide this service include (but are not limited to) initial installation requests, subsequent requests for improvement, upgrades or modifications of service, as well as repair and maintenance of these services. *Id.* ¶ 117. In addition, BellSouth will comply with applicable Commission monitoring and reporting requirements. *Id.* ¶ 123.

BST will comply with section 272(e)(2) by refusing to provide any facilities, services, or information concerning its provision of exchange access to BSLD unless such facilities, services, or information are made available to other providers of interLATA services in that market on the same terms and conditions. *Id.* ¶ 126. In accordance with section 272(e)(3), BST will charge BSLD rates for telephone exchange service and exchange access that are no less than the amount